pal wood, coal and fuel yards for the public benefit, when such yards should be favorably voted upon in referendum elections. Pursuant to this act, after a favorable referendum vote, the city council of Portland passed an ordinance appropriating certain money as a preliminary to the actual establishment of such a business. Upon petition of taxpayers asking for an injunction restraining the expenditure of this money: *Held*, taxes may be levied to finance such a business since it is a public enterprise. *Laughlin* v. *City of Portland* (Me.), 90 Atl. 318. See NOTES, p. 152.

PARTNERSHIP—QUASI-PARTNERSHIP—PARTICIPATION IN PROFITS.—A person contracted to sell certain stocks and allowed the defendants to co-operate with him. They were all to perform certain services free; and the profits of the transaction were to be divided equally between them. One of the alleged partners, claiming to act for the partnership, became indebted to plaintiff. The plaintiff sued the defendants alleging a partnership. *Held*, participation in the profits, without more, will not create a partnership. *Wade* v. *Hornaday* (Kan.), 140 Pac. 870.

From the nature of the relationship, it follows that when a partnership *inter sese* exists, the relationship exists as to third persons also. See *Wild* v. *Davenport*, 48 N. J. L. 129, 7 Atl. 295. But the liability of a partner may be created as to third persons, so that the alleged partner may be liable for the firm debts by estoppel, when *inter sese* no such relationship exists. *Fletcher* v. *Pullen*, 70 Md. 205, 14 Am. St. Rep. 355. To invoke the doctrine of estoppel, there must be a holding out of the partnership relation by the party sought to be charged, or knowledge of the holding out and a failure to correct the false impression, and the party seeking to establish the partnership must have been misled by it. *Thompson* v. *First National Bank*, 111 U. S. 529. The jury determines the sufficiency of evidence to establish such a holding out. *Seabury* v. *Bolles*, 52 N. J. L. 413, 21 Atl. 952, 11 L. R. A. 136.

It was at one time established in England that mere participation in the profits of a business would create a partnership liability toward third persons by operation of law, since in taking a part of the profits of the business, a part of that fund is taken which secures to the creditors the payment of their debts. *Grace* v. *Smith*, 2 Wm. Blackstone 998; *Waugh* v. *Carver*, 2 H. Blackstone 235. This doctrine was formerly accepted by the American courts. *Pratt* v. *Langdon*, 97 Mass. 97, 93 Am. Dec. 61; *Cushman* v. *Bailey*, 1 Hill (N. Y.) 526. Profits represent the net gain received from a business after paying all of its expenses. *People* v. *Supervisors of Niagara County*, 4 Hill (N. Y.) 20. And the fallacy of the old doctrine is evident, for until the creditors are paid there can be no profits. But in England, it was later established that, while the right to share in the profits is one of the tests as to the existence of the partnership, such a right alone will not create the relation. *Cox* v. *Hickman*, 3 C. B. (N. S.) 523, 8 H. L. C. 268. Some American courts find great difficulty in abandoning the old rule, and follow it with certain limitations. *Brandon* v. *Conner*, 117 Ga. 759, 45 S. E. 371, 63 L. R. A. 260; *Leggett* v. *Hyde*,

58 N. Y. 272, 17 Amer. Rep. 244. And in one jurisdiction the passage of a statute was necessary to overrule it. *Wessels* v. *Weiss,* 166 Pa. St. 490, 31 Atl. 247. But generally the later view of the English court has been approved, and it is now held that the mere participation in the profits of another's business, will not make the participant a partner as to third persons. *Fairley* v. *Nash,* 70 Miss. 193, 12 South. 149; *Mehan* v. *Valentine,* 145 U. S. 611. Participation in profits is presumptive but not conclusive evidence of a partnership. *Mehan* v. *Valentine, supra.*

RAILROADS—NEGLIGENCE—CATTLE GUARDS.—A railway company was required by statute to erect and maintain proper cattle guards. It did so, but allowed them to become so filled with ice and snow as to make it possible for animals to cross. *Held,* this, without more, does not amount to negligence in law for which the company is liable. *Martin* v. *Atchison, etc., R. Co.* (Kan.), 141 Pac. 599.

Neither the common law, nor the ordinary fence law imposes upon railroads the duty to erect fences or cattle guards upon their right of way. *Ward* v. *Paducah, etc., R. Co.,* 4 Fed. 862. The railroad is not liable unless the injury occurred through its reckless, wanton or malicious acts. *Bateman* v. *Rutland R. Co.,* 126 App. Div. 511, 110 N. Y. Supp. 506.

But by statute in most States railroads are required to construct and maintain cattle guards at all crossings sufficient to prevent stock from getting upon their tracks. But its liability in such cases depends upon the existence of negligence in the light of all the surrounding circumstances. *Wait* v. *Bennington, etc., R. Co.,* 61 Vt. 268, 17 Atl. 284; *Yates* v. *Chicago, etc., R. Co.,* 115 Minn. 492, 132 N. W. 994, 36 L. R. A. (N. S.), 997. When a railroad company permits its cattle guards to remain filled with ice and snow after a sufficient time has elapsed in which to remove it and as a result cattle stray upon the track and are injured, the company is liable. *Duningan* v. *C., etc., R. Co.,* 18 Wis. 28; *Indiana, etc., R. Co.* v. *Drum,* 21 Ill. App. 331; *Graham* v. *Chicago, etc., R. Co.,* 78 Iowa 564, 43 N. W. 529; 5 L. R. A. 813; *Robinson* v. *Chicago, etc., R. Co.,* 79 Iowa, 495, 44 N. W. 718. To impose upon a railway company the duty to keep its guards clear of the natural accumulations of ice and snow is one sometimes impossible of fulfillment and often impracticable on account of the frequent fall of snow. The expense of doing so is out of proportion to the benefits to be derived from its performance, and its failure to do so does not render it liable. *Blais* v. *Minneapolis, etc., R. Co.,* 34 Minn. 57, 24 N. W. 558, 57 Am. Rep. 36. Under ordinary circumstances reasonable care and diligence does not require a railway company to remove the natural accumulations of ice and snow. *Blais* v. *Minneapolis, etc., R. Co., supra.*

As a cattle guard is in effect a fence the rules applicable to one should apply also to the other. *Blais* v. *Minneapolis, etc., R. Co., supra.* And it is generally held that where a fence is destroyed and before the expiration of a reasonable time cattle stray upon the track and are in-